

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
High Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Request for Review of Decision of Universal)	
Service Administrator by Corr Wireless)	
Communications, LLC)	

To: The Commission

**JOINT OPPOSITION OF
THE RURAL INCUMBENT LOCAL EXCHANGE CARRIERS
TO THE JOINT PETITION FOR RECONSIDERATION**

The rural incumbent local exchange carriers (“rural ILECs”) listed in Attachment A join in submitting the following Opposition to the Joint Petition for Reconsideration (the “Joint Petition”), filed by Allied Wireless Communications Corp., et. al., on October 4, 2010, in the above captioned proceeding. The rural ILECs joining in the filing of this Opposition all serve rural areas of the U.S., are all ILECs within the meaning of section 251(h) of the Communications Act of 1934, as amended (“the Act”) and have been designated as Eligible Telecommunications Carriers (“ETCs”) pursuant to section 214 of the Act. Additionally, many of such rural ILECs compete with wireless or wireline ETCs providing supported services in their ILEC study areas. The competitive ETC revenue streams stand to be increased by the wireless carriers’ Joint Petition. Moreover, the Commission has expressed concerns about the fund’s sustainability, a circumstance addressed in part by the FCC’s Interim Cap Order,¹ but which the Joint Petitioners now seek to transfer into a

¹ In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et. al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc., New Hampshire ETC Designation Amendment, WC Docket No. 05-337; CC Docket No. 96-45, 23 FCC Red. 8834, 8882 (May 1, 2008)(“Interim Cap Order”).

windfall for themselves. Rural ILECs are highly dependent upon the universal service fund mechanism, particularly the high cost fund (“HCF”) mechanism, and stand to be harmed by Joint Petitioners’ efforts.

This Opposition focuses primarily upon Joint Petitioners’ challenge to that aspect of the Corr Wireless Order² which refused to redistribute reclaimed high cost amounts from Verizon Wireless and Sprint. The Joint Petitioners argue that the high cost amounts gained (by the acquisition-related roll-backs applicable to Verizon Wireless and Sprint) simply should be redistributed to remaining competitive ETCs. This argument should be rejected. Such a result would constitute unwise public policy and, in any event, the Corr Wireless Order is lawful on this score.

**The Corr Wireless Order Correctly Refused To Redistribute
High Cost Amounts to Wireless And Other Competitive ETCs**

Although the Joint Petitioners level a welter of charges concerning the Commission’s processes in refusing to increase Joint Petitioners’ high cost fund receipts,³ at bottom, they essentially want to unwind the Commission’s earlier adopted interim cap. The mathematics of their requested relief is inescapable. The interim cap was adopted in 2008 to address growth in the high cost fund by competitive ETCs, characterized by the U.S Court of Appeals as having “skyrocketed” from \$15 million in 2001, to almost \$1 billion in 2006.⁴ Indeed, in imposing the interim cap order, only applicable to competitive ETCs, the FCC described the high cost fund as in crisis, subject to

² In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC, WC Docket No. 05-337; CC Docket No. 96-45, FCC 10-155, Released September 3, 2010. (“Corr Wireless Order”).

³ Petitioners variously argue that: 1) the Commission erroneously determined that Verizon and Sprint remain “eligible” for high cost support; 2) two *ex parte* filings – and one filed *after* the Corr Order’s release – undercut the Order’s factual findings; and 3) that Verizon Wireless and Sprint’s agreement to tail-off high cost funding was neither “voluntary” nor consistent with the statutory scheme. *See* Joint Petition at, pp. 15-20.

⁴ *See Rural Cellular Ass’n, et. al. v FCC*, 588 F.3d 1095, 1098 (DC Cir 2009).

“explosive growth” and warranting an “emergency cap” for competitive ETCs.⁵ Both Verizon Wireless and Sprint represent \$530 million of the overall burden placed upon the high cost fund.⁶

The redistribution of over ½ billion U.S. dollars annually to the Petitioners and their ilk, constitutes an end run and would shatter the impact of the cap as to them. Indeed, in affirming the FCC’s interim cap order, challenged by substantially the same interest group as present Petitioners, the U.S. Court of Appeals made several apt observations.

There, as here, the wireless ETCs challenged the FCC’s interim cap decision as arbitrary and capricious; as here, the challenge also subsumed an argument urging an erroneous interpretation of section 254 of the Act by the FCC. Of particular note, the wireless ETCs there also challenged the Commission’s determination that it was necessary to maintain “sustainable” USF support in order to preserve the universal service mechanism under section 254.⁷

The Court rejected the wireless carriers’ argument that the FCC was wrong to consider the fund’s sustainability and the Court used language that foreshadowed the current Joint Petitioners’ demand for more high cost money.

Petitioners apparently think § 254(h)(5) compels the Commission to welcome wretched excess -- at least so long as compensating fee extractions can be squeezed out of consumers.

* * *

The agency seeks to strike an appropriate balance between the interests of widely dispersed consumers with small stakes and a concentrated interest group seeking to increase its already large stake.⁸

The Court went on to note the deference due the Commission,⁹ particularly in light of the wireless ETCs’ failure to include any cost data to show that the wrong balance had been struck by

⁵ See Interim Cap Order at ¶1.

⁶ See National Broadband Plan, p. 147.

⁷ Rural Cellular Ass’n, 588 F.3d at 1101-1104.

⁸ Id. at 1103. (Emphasis supplied).

⁹ Id., citing Fresno Mobile Radio, Inc. v. FCC, 165 F.3d 965, 971 (D.C. Cir. 1999)

the Commission.¹⁰ Moreover, the Court noted, the “...CETCs receive well in excess of their costs” under the identical support rule, and thus enjoy “a significant advantage over ILECs under the current support system”.¹¹ The Court further noted that “...it is CETC support, not ILEC support that is exerting pressure on the USF and therefore poses the more direct threat to the fund’s sustainability.”¹² The Court concluded that the FCC’s decision was not arbitrary and capricious, given the funding crisis caused by CETC participation in the fund, and the deference accorded agencies “...in matters implicating predictive judgments and interim regulations.”¹³

Against this background, the Joint Petitioners’ bold request for an extra half a billion in USF funding hardly measures up. Tellingly, and like the industry’s failure in proof in Rural Cellular Ass’n, there is no attempted explanation in the Joint Petition as to why the carriers deserve such a windfall in the first instance. While this lapse is understandable given the Rural Cellular Ass’n Court’s finding that “CETCs receive well in excess of their costs”, this failure hardly justifies the relief sought. Indeed, the wireless ETCs have already had their day in Court in the Rural Cellular Ass’n case. To confer additional and significant funds upon the Petitioners’ already inflated USF revenue stream would contravene not only the Commission’s interim cap order, but result in the “wretched excess” already identified and rejected by the Court.

Moreover, the Joint Petition should be rejected because it has missed the standard of review. As the Rural Cellular Ass’n Court noted, the Commission’s discretion here is focused upon a balancing of interests and in an interim posture. Indeed, the NPRM that accompanies the Corr Wireless Order underscores that point. The Rural Cellular Ass’n Court noted that the “arbitrary and

¹⁰ Rural Cellular Ass’n, 588 F.3d at 1103-1104

¹¹ Id.

¹² Id. (Emphasis in original).

¹³ Rural Cellular Ass’n, 588 F.3d at 1105.

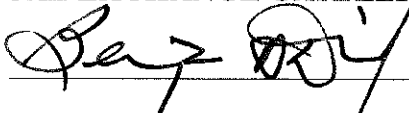
capricious” standard (under which Joint Petitioners mount their challenge) is particularly deferential under these circumstances.¹⁴

Finally, the rural ILECs participating in this Joint Opposition note their agreement with one aspect of the Joint Petition: The Commission should clarify here, or elsewhere, that legacy Verizon lines should not be added to Alltel’s line count, as Verizon Wireless evidently intends through several state proceedings.¹⁵

In conclusion, rather than make their own case on the merits, including any financial impact calculations, the Joint Petitioners have been content to lie in the weeds, emerging only later with complaints of unfairness. The Joint Petitioners’ requested reconsideration accordingly should be rejected. The Petition represents an untimely attempt to unravel the Commission’s interim cap order, and their legal arguments amount to nothing more than the mechanics of the interim cap itself, having sat out the main debate for which the Commission is answerable on review. The Commission should make the clarification concerning Verizon Wireless, as noted above.

Respectfully submitted,

**THE PARTICIPATING RURAL INCUMBENT
LOCAL EXCHANGE CARRIERS**

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¹⁴ Id.

¹⁵ See e.g., Joint Petition at p. 11, n 43

ATTACHMENT A

Participating Rural Independent Local Exchange Carriers

3 Rivers Telephone Cooperative, Inc.
BEK Communications Cooperative
Choctaw Telephone Company
Delhi Telephone Company
Dickey Rural Telephone Cooperative
Harrisonville Telephone Company
Penasco Valley Telephone Cooperative, Inc.
Smart City Telecommunications, LLC d/b/a Smart City Telecom
SRT Communications, Inc.
Waitsfield-Fayston Telephone Company, Inc.
Wiggins Telephone Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of October, 2010, a copy of the foregoing **Opposition of the Rural Incumbent Local Exchange Carriers to the Joint Petition for Reconsideration** was served via U.S. Mail, postage prepaid, to the following:

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